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it from the car, and testing it, did not constitute a delivery to the T. Company.

[Ed. Note.—For other cases, see Sales, Dec. Dig. § 161.*]

2. Principal and Agent (§ 159*)—Injury to Third Person—Scope of Authority.—Where F., acting as the seller's agent, sold an engine to the T. Company, and the engine was consigned by the seller to itself, in care of F., his act in securing an assistant, setting up the engine, running it from the car and testing it was within the scope of his authority, so that the seller was liable for damages from fire resulting from the negligent operation of the engine during the test.

[Ed. Note.—For other cases, see Principal and Agent, Cent. Dig. §§ 600-603; Dec. Dig. § 159.*]

3. Appeal and Error (§ 1151*)—Disposition of Cause—Modification—Amount.—In an action for damages to a house which plaintiff owned in common with others, the court instructed the jury to assess plaintiff's damages at a certain fractional part of the value of the property, which part, it was admitted on appeal, was slightly too large. The jury placed a valuation on the house. Held, that the court on appeal would modify the judgment by giving plaintiff the true fractional portion of such valuation to which he was entitled.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 4501; Dec. Dig. § 1151*]

4. Words and Phrases—"Knocked Down."—The term "knocked down," used to describe the condition of a traction engine on arrival at its destination, means that its several parts had to be put together in order to its operation.

WRIGHT et al. v. JOHNSON et al.

Nov. 19, 1908.

[62 S. E. 948.]

1. Partition (§ 95*)—Decree—Operation and Effect.—Acts 1885-86, p. 525, c. 466 (Code 1887, § 2565 [Code 1904, p. 1313]), providing that a decree of partition ex proprio vigore shall vest title in the several co-owners without execution of conveyances, and that the act shall be held retrospective, can operate retrospectively only where the decree allotted the lands to the rightful owner, and cannot apply to vest in a husband title to lands allotted to him by partition, but which belonged to his wife as heir.

[Ed. Note.—For other cases, see Partition, Dec. Dig. § 95.*]

2. Statutes (§ 268*)—Construction—Retroactive Operation.—A

*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

curative act can operate only on something which the Legislature might validly have enacted in the first instance.

[Ed. Note.—For other cases, see Statutes, Cent. Dig. §§ 360, 361; Dec. Dig. § 268.*]

3. Judgment (§ 495*)—Collateral Attack—Presumptions.—In ejectment involving a decree in partition, it would be presumed that the county court in which the proceedings were had, being a court of general jurisdiction, had jurisdiction both of the subject-matter and the parties, as against the objection that it did not appear that the wife of an allottee was a party.

[Ed. Note.—For other cases, see Judgment, Cent. Dig. §§ 933, 934; Dec. Dig. § 495.*]

4. Ejectment (§ 71*)—Pleading—Withdrawal—Disclaimer.—In ejectment it was not error to permit one of the defendants to withdraw a plea of not guilty inadvertently filed by counsel of the other defendants, and to permit him to file a disclaimer.

[Ed. Note.—For other cases, see Ejectment, Cent. Dig. § 194; Dec. Dig. § 71*]

5. Ejectment (§ 71*)—Pleading—Disclaimer.—Defendant in ejectment, who was the grantor to the other defendants, with covenants of general warranty, was entitled to file a disclaimer, and escape costs if he was without interest in the land.

[Ed. Note.—For other cases, see Ejectment, Dec. Dig. § 71.*]

6. Witnesses (§ 112*)—Competency—Interest.—Under Code 1887, § 3345 (Code 1904, p. 1766), making witnesses competent notwithstanding interest, the grantor of defendants in ejectment, though having conveyed with covenants of general warranty, was a competent witness for his grantees.

[Ed. Note.—For other cases, see Witnesses, Cent. Dig. §§ 434-436; Dec. Dig. § 112.*]

7. Ejectment (§ 142*)—Improvements—Good Faith.—Under Code 1904, § 2760, permitting any defendant against whom a judgment for land has been rendered to recover for permanent improvements made thereon, the improvement must have been in good faith; and, where the person making them knew that the land belonged to his wife, and that he held only a life estate, he could not recover.

[Ed. Note.—For other cases, see Ejectment, Cent. Dig. § 500; Dec. Dig. § 142.*]

8. Ejectment (§ 141*)—Improvements—Character—Permanency—"Permanent Improvement."—Crops of wheat and potatoes were of no permanent value to land, and fertilizers used with the wheat crop,

*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

being for the special benefit of that crop, was not a permanent improvement within Code 1904, § 2760, permitting recovery for permanent improvements.

[Ed. Note.—For other cases, see Ejectment, Dec. Dig. § 141.*
For other definitions, see Words and Phrases, vol. 6, p. 5312.]

MANN *v.* PADDOCK et al.

Nov. 19, 1908.

[62 S. E. 951.]

1. Partnership (§ 68*)—Property—Partnership Real Estate.—The owner of a tract agreed to give a part of it to a railroad in consideration of the construction of the road, and thereafter defendants formed a partnership, and a majority of the stockholders in the railroad gave their stock therein to the firm in order to secure the completion of the road, after which the owner of the tract subdivided it under an agreement with defendants and conveyed it to the firm, the deed reciting the grantor's former agreement with the railroad, the transfer of its stock to defendants, and the sale of their interests to the firm. Held, that the tract conveyed became partnership property.

[Ed. Note.—For other cases, see Partnership, Cent. Dig. §§ 101-111; Dec. Dig. § 68.*]

2. Judgment (§ 776*)—Lien—Property Affected.—In a suit to subject the interest of one of the defendants in a tract of land to the payment of complainant's judgment rendered against him December 31, 1901, the other defendant claiming the land was partnership property, the fact that, after a partnership settlement between defendants in July, 1901, the judgment debtor recovered a money judgment against the other defendant, which was discharged after the beginning of this suit, was immaterial, as complainant's judgment did not bind that recovery.

[Ed. Note.—For other cases, see Judgment, Dec. Dig. § 776.*]

3. Partnership (§ 68*)—Property—Real Estate—Conversion—Ex-tent.—By the English rule partnership realty is converted into personalty to all intents and purposes, but the general rule in this country limits the conversion to the purposes of the partnership.

[Ed. Note.—For other cases, see Partnership, Cent. Dig. § 108; Dec. Dig. § 68.*]

*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.